

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

January 8, 2020

Lyle W. Cayce  
Clerk

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No. 18-50027  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONALD LYNN GIVENS,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:16-CV-515  
USDC No. 1:01-CR-212-1

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Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:\*

Donald Lynn Givens, federal prisoner # 28525-180, appeals the denial of his 28 U.S.C. § 2255 motion as untimely. His § 2255 motion challenged his sentence for bank robbery with the use of a dangerous weapon. We granted a certificate of appealability. Relying on *Johnson v. United States*, 135 S. Ct. 2551, 2557, 2563 (2015), Givens argues that his Texas burglary convictions did

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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not implicate career-offender classification under U.S.S.G. § 4B1.1 for the purposes of the mandatory Guidelines prior to *United States v. Booker*, 543 U.S. 220, 245 (2005). Givens contends that *Johnson* renders his pre-*Booker* sentence unconstitutionally vague and that he timely filed his § 2255 motion within one year of *Johnson*.

Givens, however, has not asserted a right dictated by *Johnson* and therefore he is not entitled to a new period of limitations under § 2255(f)(3). *United States v. London*, 937 F.3d 502, 507-09 (5th Cir. 2019). Accordingly, his § 2255 motion was not timely. *Id.* We AFFIRM the judgment of the district court.